IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10513 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI SHAMJIBHAI BECHARBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR PRAVIN GONDALIYA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. District Magistrate, Bhavnagar passed an order on August 18, 1999, in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration 7 offences registered against the detenue - petitioner under the Bombay Prohibition Act. The detaining authority also took in to consideration the statements of three anonymous witnesses recorded on August 8, 1999 and August 9, 1999. The detaining authority was satisfied that the detenue is a "bootlegger" and is required to be immediately prevented from pursuing the activities which are detrimental to public order. The authority considered the possibility of resorting to less drastic remedies and came to conclusion that the detention under the PASA Act is the only remedy that can be resorted to for immediately preventing the petitioner fro pursuing his illegal and anti-social activities.

#. The said order of detention is challenged by the petitioner on various grounds. However, Mr. Gondalia, learned advocate for the petitioner submitted that the power exercised by the detaining authority under section 9(2) of the PASA Act is improper, which has affected the right of the detenue of making an effective representation and therefore, the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition. It transpires that the verification is done by the detaining authority in respect of the anonymous witnesses on 18th August, 1999 and the order is passed on the same day i.e. on August 18, 1999.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of three anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 18, 1999 passed against the detenue - Koli Shama Becharbhai, is hereby quashed. The detenue is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

#. It also appears that the name of the petitioner is shown as Koli Shamajibhai Becharbhai in the cause title whereas the order of detention indicates the name of the detenue as Koli Shama Becharbhai. Writ may therefore be sent in the name of Koli Shama Becharbhai.

[A.L.DAVE, J.]

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